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13 UNITED STATES DISTRICT COURT  
14 FOR THE NORTHERN DISTRICT OF CALIFORNIA  
15 OAKLAND DIVISION

16 ALFRED T. GIULIANO, Chapter 7 Trustee of  
the Ritz Estate, on Behalf of the Ritz Estate;  
17 CPM Electronics Inc.; E.S.E. Electronics, Inc.,  
and MFLASH, Inc.

18 On Behalf of Themselves and All Others  
19 Similarly Situated,

20 Plaintiffs,

21 v.

22 SANDISK CORPORATION,

23 Defendant.

CASE NO. CV 10-02787-SBA

**[PROPOSED] ORDER GRANTING  
DEFENDANT'S MOTION TO  
EXCLUDE THE REPORT AND  
TESTIMONY OF PLAINTIFFS'  
EXPERT DR. RYAN SULLIVAN**

1 Defendant SanDisk Corporation ("SanDisk") has filed this Motion to Exclude the Report  
2 and Testimony of Plaintiffs' Expert Dr. Ryan Sullivan pursuant to Rule 702 of the Federal Rules of  
3 Evidence and *Daubert v. Merrell Dow Pharmaceuticals, Inc.*, 509 U.S. 579 (1993).

4 Dr. Sullivan's opinions related to market power and market concentration are contrary to  
5 law and, therefore, should be excluded as unreliable and unhelpful to the trier of fact. *See, e.g.*,  
6 *Apple, Inc. v. Samsung Elecs. Co.*, No. 11-CV-01846-LHK, 2012 WL 2571332, at \*6 (N.D. Cal.  
7 June 30, 2012); *Bailey v. Allgas, Inc.*, 148 F. Supp. 2d 1222, 1245-46 (N.D. Ala. 2000), *aff'd*, 284  
8 F.3d 1237 (11th Cir. 2002). In addition, his opinions are inadmissible because they are based on  
9 evidence relating to the wrong product market. *See Champagne Metals v. Ken-Mac Metals, Inc.*,  
10 458 F.3d 1073, 1079 (10th Cir. 2006).

11 With regard to impact and damages, Dr. Sullivan's opinions are excluded because his  
12 regression model is "so incomplete as to be inadmissible as irrelevant." *See Freeland v. AT & T*  
13 *Corp.*, 238 F.R.D. 130, 147 (S.D.N.Y. 2006) (quoting *Bazemore v. Friday*, 478 U.S. 385, 400 n.10  
14 (1986)). In addition, Dr. Sullivan's opinions are unreliable because they are based on unsupported  
15 assumptions, *see McGlinchy v. Shell Chem. Co.*, 845 F.2d 802, 807-08 (9th Cir. 1998), and also do  
16 not fit the facts of the case because those assumptions are contrary to market realities. *See Concord*  
17 *Boat Corp. v. Brunswick Corp.*, 207 F.3d 1039, 1057 (8th Cir. 2000).

18 For the reasons stated above, IT IS HEREBY ORDERED THAT:

19 Defendant's Motion to Exclude the Report and Testimony of Plaintiffs' Expert Dr. Ryan  
20 Sullivan is GRANTED.

21  
22 IT IS SO ORDERED.

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24 SAUNDRA BROWN ARMSTRONG  
25 United States District Judge  
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